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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,355	03/30/2004	Joel C. Higgins	5490-000378	5019
27572	7590	11/17/2006	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.		PHILOGENE, PEDRO		
P.O. BOX 828		ART UNIT		PAPER NUMBER
BLOOMFIELD HILLS, MI 48303		3733		

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/813,355	HIGGINS, JOEL C.	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 March 2004.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>3/30/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 19-22, 33-37, 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Burstein et al. (2005/0027365).

With respect to claims 1, 19, 33, Burstein et al disclose a prosthetic implant comprising a femoral component operable to replace at least a portion of a patient's natural femur; as set forth in para [0077] a tibial component (302) operable replace at least a portion of a patient's natural tibia, the tibial component having a superior tibial component surface, as best seen in the FIGS.; and a bearing operable to provide engagement between the femoral component and the tibial component having a superior bearing surface (304) operable to articulate with the femoral component; and an inferior bearing surface operable to cooperate with the superior tibial component surface; as best seen in the FIGS.; a wear reduction device (310) located at at least one the superior tibial component surface and the inferior bearing surface operable to reduce wear upon at least one the superior tibial component surface and the inferior bearing surface. A tibial plate (302, a superior surface, an inferior surface opposite the superior surface a bearing engagement surface (106) located at the superior surface;

and a wear reduction surface (310) located at the superior surface, a stem (306) extending from the inferior surface. A first member (304), a second member (302) engaging the first member; and a wear reduction device (310) provided on at least one of the first member and the second member to reduce wear of the first member and the second member.

With respect to claims 2-8, 20-22,34-37,48, Burstein et al discloses all the limitations, as set forth in page 3, para [0069-0070], page 4, para[0074-0082], para [0084-0087], page 5, para[0088] para [0101-0105], page 6, para [0109], para [0122]; and as best seen in FIGS.1-20.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-18, 23-32,38-47, are rejected under 35 U.S.C. 103(a) as being unpatentable over Burstein et al. (2005/0027365).

With respect to the above claims, it is noted that Burstein et al did not teach of this preferred material to make the bearing, as claimed by applicant. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any known material to make the bearing, since it has been held to be within the general skill of the worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125

USPQ 416. Furthermore, the use of these materials in the bearing field is old and well known in the art, as set forth in the pertinent art cited.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,358,530	10-1994	Hodorek
6,514,289	2-2003	Pope et al.
5,370,694	12-1994	Davidson
5,080,675	1-1992	Lawes et al
5,037,438	8-1991	Davidson

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
November 9, 2006

  
PEDRO PHILOCENE  
PRIMARY EXAMINER